

House File 2510 - Introduced

HOUSE FILE 2510
BY STECKMAN

A BILL FOR

1 An Act relating to retailers maintaining a place of business in
2 this state for purposes of the collection of sales and use
3 taxes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 423.1, Code 2009, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 0A. "*Affiliate*" means any entity to which
4 any of the following applies:

5 a. Directly, indirectly, or constructively controls another
6 entity.

7 b. Is directly, indirectly, or constructively controlled by
8 another entity.

9 c. Is subject to the control of a common entity. A common
10 entity is one which owns directly or individually more than ten
11 percent of the voting securities of the entity.

12 Sec. 2. Section 423.1, subsection 43, Code 2009, is amended
13 by striking the subsection and inserting in lieu thereof the
14 following:

15 43. "*Retailer maintaining a place of business in this state*"
16 or any similar term includes all of the following:

17 a. A retailer having or maintaining within this state,
18 directly or indirectly by a subsidiary, an office, distribution
19 house, sales house, warehouse, or other such place of business.

20 b. A retailer's representative operating within this
21 state under the authority of the retailer or the retailer's
22 subsidiary.

23 c. A solicitor operating in the state with the consent or
24 at the direction of a retailer.

25 d. This subsection applies irrespective of whether a
26 place of business, representative, or solicitor is located
27 or operates here permanently or temporarily or whether the
28 retailer or the retailer's subsidiary is admitted to do
29 business within this state pursuant to chapter 490.

30 Sec. 3. Section 423.1, Code 2009, is amended by adding the
31 following new subsections:

32 NEW SUBSECTION. 51A. "*Solicitor*" means a person, including
33 an independent contractor, who directly or indirectly solicits
34 business for a retailer, refers potential customers to a
35 retailer, or otherwise regularly engages in activity which

1 is significantly associated with the retailer's ability to
2 establish or maintain a market in the state or which effects a
3 substantial amount of sales by the retailer in the state.

4 NEW SUBSECTION. 52A. "*State agency*" means an authority,
5 board, commission, department, instrumentality, or other
6 administrative office or unit of this state, or any other state
7 entity reported in the Iowa comprehensive annual financial
8 report, including public institutions of higher education.

9 NEW SUBSECTION. 62. "*Voting security*" means a security to
10 which any of the following applies:

11 a. Confers upon the holder the right to vote for the
12 election of members of the board of directors or similar
13 governing body of the entity.

14 b. Is convertible into, or entitles the holder to receive
15 upon its exercise, a security that confers such a right to
16 vote.

17 c. Is a general partnership interest.

18 Sec. 4. NEW SECTION. 423.1A **Presumption of solicitation.**

19 1. A person shall be presumed to be a solicitor for purposes
20 of this chapter if all of the following conditions are met:

21 a. The person has entered into an agreement with a retailer
22 whereby a commission or other consideration is paid by the
23 retailer to the person for directly or indirectly referring
24 potential customers to the retailer by digital or electronic
25 means. For purposes of this section, "*digital or electronic*
26 *means*" includes a link on an internet site or any substantially
27 similar mechanism designed for use on a personal computer or
28 other personal digital device that provides the ability to
29 direct potential customers from the person to the retailer for
30 the purpose of making a sale at retail.

31 b. The retailer has total gross receipts attributable to
32 agreements such as those described in paragraph "a" in excess of
33 ten thousand dollars for the twelve-month period ending on the
34 last day of the most recent calendar quarter.

35 2. The presumption created in subsection 1 may be rebutted

1 by a showing of proof that a person with whom the retailer
2 has an agreement did not directly or indirectly engage in
3 referrals in the state or that the activities of the person on
4 behalf of the retailer were de minimis. Maintaining a digital
5 or electronic means of referral shall not be considered de
6 minimis.

7 3. This section shall not be interpreted or construed in any
8 way to limit the definition of "solicitor" or other definitions
9 provided in section 423.1.

10 Sec. 5. Section 423.2, subsection 10, Code 2009, is amended
11 to read as follows:

12 10. a. Any person or that person's affiliate, which is
13 a retailer in this state or a retailer maintaining a place
14 of business in this state under this chapter, that enters into
15 a contract with an agency of this state must register, collect,
16 and remit Iowa sales tax under this chapter on all sales of
17 tangible personal property and enumerated services.

18 b. Every bid submitted and each contract executed by a
19 state agency shall contain a certification by the bidder or
20 contractor stating that the bidder or contractor is registered
21 with the department and will collect and remit Iowa sales tax
22 due under this chapter. In the certification, the bidder or
23 contractor shall also acknowledge that the state agency may
24 declare the contract or bid void if the certification is false.
25 Fraudulent certification, by act or omission, may result in
26 the state agency or its representative filing for damages for
27 breach of contract.

28 ~~For the purposes of this subsection, the following~~
29 ~~definitions apply:~~

30 ~~a. "Affiliate" means any entity to which any of the~~
31 ~~following applies:~~

32 ~~(1) Directly, indirectly, or constructively controls~~
33 ~~another entity.~~

34 ~~(2) Is directly, indirectly, or constructively controlled~~
35 ~~by another entity.~~

1 ~~(3) Is subject to the control of a common entity. A common~~
2 ~~entity is one which owns directly or individually more than ten~~
3 ~~percent of the voting securities of the entity.~~

4 ~~b. "State agency" means an authority, board, commission,~~
5 ~~department, instrumentality, or other administrative office or~~
6 ~~unit of this state, or any other state entity reported in the~~
7 ~~Iowa comprehensive annual financial report, including public~~
8 ~~institutions of higher education.~~

9 ~~c. "Voting security" means a security to which any of the~~
10 ~~following applies:~~

11 ~~(1) Confers upon the holder the right to vote for the~~
12 ~~election of members of the board of directors or similar~~
13 ~~governing body of the entity.~~

14 ~~(2) Is convertible into, or entitles the holder to receive~~
15 ~~upon its exercise, a security that confers such a right to~~
16 ~~vote.~~

17 ~~(3) Is a general partnership interest.~~

18 Sec. 6. Section 423.5, subsection 8, Code 2009, is amended
19 to read as follows:

20 8. Any person or that person's affiliate, which is a
21 retailer in this state or a retailer maintaining a place
22 of business in this state under this chapter, that enters
23 into a contract with an agency of this state must register,
24 collect, and remit Iowa use tax under this chapter on all sales
25 of tangible personal property and enumerated services. Every
26 bid submitted and each contract executed by a state agency
27 shall contain a certification by the bidder or contractor
28 stating that the bidder or contractor is registered with the
29 department and will collect and remit Iowa use tax due under
30 this chapter. In the certification, the bidder or contractor
31 shall also acknowledge that the state agency may declare the
32 contract or bid void if the certification is false. Fraudulent
33 certification, by act or omission, may result in the state
34 agency or its representative filing for damages for breach of
35 contract.

1 ~~For the purposes of this subsection, "affiliate", "state~~
2 ~~agency", and "voting security" mean the same as defined in~~
3 ~~section 423.2, subsection 10.~~

4 Sec. 7. Section 321.105A, subsection 2, paragraph a,
5 unnumbered paragraph 1, Code Supplement 2009, is amended to
6 read as follows:

7 For purposes of this subsection, "purchase price" applies to
8 the measure subject to the fee for new registration. "Purchase
9 price" shall be determined in the same manner as "sales price"
10 is determined for purposes of computing the tax imposed upon
11 the sales price of tangible personal property under chapter
12 423, pursuant to the definition of "sales price" in section
13 423.1, ~~subsection 47~~, subject to the following exemptions:

14 EXPLANATION

15 This bill relates to the collection of sales and use taxes by
16 retailers maintaining a place of business in this state.

17 A retailer located in this state, or maintaining a place
18 of business in this state, must collect and remit sales taxes
19 to the department of revenue. Currently, as defined in Code
20 section 423.1, the term "retailer maintaining a place of
21 business in the state" includes certain places of business,
22 subsidiary arrangements, and representatives operating on a
23 retailer's behalf. The bill adds the term "solicitor" to that
24 definition. A solicitor is defined as a person, including an
25 independent contractor, who directly or indirectly solicits
26 business for a retailer, refers potential customers to a
27 retailer, or otherwise regularly engages in activity which
28 is significantly associated with the retailer's ability to
29 establish or maintain a market in the state or which effects a
30 substantial amount of sales by the retailer in the state.

31 The bill provides that a person is presumed to be a solicitor
32 if that person enters into an agreement with a retailer whereby
33 a commission or other consideration is paid by the retailer
34 to the person for directly or indirectly referring potential
35 customers to the retailer by digital or electronic means and

1 has gross receipts for the year in excess of \$10,000. Digital
2 or electronic means includes links on internet sites or similar
3 mechanisms on other devices with the capability of directing
4 customers to the retailer for purposes of making sales. The
5 presumption is rebuttable by proof that a person with whom the
6 retailer has an agreement did not engage in referrals in the
7 state or that the activities of the person were de minimis.

8 By operation of law, the changes to the definition of
9 "retailer maintaining a place of business in the state" also
10 apply to the use tax imposed in Code section 423.5.

11 The bill makes conforming amendments to the definitions in
12 Code section 423.1.